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Jennifer Perkins
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August 21, 1997

Office of the Secretary
Federal Communications Commission
Washington D.C. 20554

Re: Further NPRM, DISCO II
(IB Docket No. 96-111, CC Docket No. 93-23 RM-7931, File No. ISP-92-007)

Telesat Canada has today filed a facsimile copy of its submission in the above-referenced proceeding through the firm Wiley Rein and Fielding, its attorneys in Washington D.C. Attached to this letter is the original of the document for the Commission's records.

Respectfully submitted,

Jennifer Perkins
Secretary and General Counsel

enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Amendment of the Commission's	)	IB Docket No. 96-111
Regulatory Policies to Allow Non-U.S.-	)	
Licensed Space Stations to Provide	)	
Domestic and International Satellite	)	
Service in the United States	)	
	)	
and	)	
	)	
Amendment of Section 25.131 of the	)	CC Docket No. 93-23
Commission's Rules and Regulations to	)	RM-7931
Eliminate the Licensing Requirement for	)	
Certain International Receive-Only Earth	)	
Stations	)	
	)	
and	)	
	)	
COMMUNICATIONS SATELLITE	)	File No. ISP-92-007
CORPORATION	)	
Request for Waiver of Section	)	
25.131(j)(1) of the Commission's Rules	)	
As It Applies to Services Provided	)	
Via the Intelsat K Satellite	)	

SUPPLEMENTAL COMMENTS OF TELESAT CANADA

Telesat Canada ("Telesat" or "the Company") hereby submits the following supplemental comments in response to the Further Notice of Proposed Rulemaking ("the Further Notice"), released by the Federal Communications Commission ("FCC" or "the Commission") on 18 July 1997, in the above captioned proceeding.

21 August 1997

I. INTRODUCTION

With the release of the Further Notice in this proceeding, the Commission is seeking additional comment on a framework to allow non-U.S. satellites to provide service in the United States. In the original DISCO II Notice, the Commission essentially proposed to examine whether U.S. satellites have "effective competitive opportunities" in a foreign market before allowing a satellite licenced by that foreign country to serve the United States (the "ECO-Sat" test).[1] In light of the successful conclusion of a World Trade Organization Agreement on Basic Telecommunications Services ("WTO Basic Telecom Agreement" or "the Agreement") and the impact that that Agreement will have on the competitiveness of the global telecommunications markets, the Commission is now proposing to revisit its original proposals. Telesat is pleased to have this opportunity to provide its further comments in this very important proceeding.

Indeed, the prospect of serving U.S. and other WTO member markets is a welcome opportunity for Telesat and the Company is confident that it can make a positive contribution to the competitiveness of these markets to the benefit of all satellite users located therein. The Company's future commercial interests may include the offering of service to the U.S. market for both domestic and crossborder applications, and thus the outcome of this proceeding is of vital importance to Telesat. As Telesat is a provider of Fixed Satellite Service (FSS) facilities in geostationary orbit (GSO), the following comments will relate to these types of facilities and for the FSS services covered by the WTO Basic Telecom Agreement. Telesat notes that the Commission's determinations of traditional FSS services are not modified by this notice and include, among other things, the transmission of television signals to cable headends.

As the Commission notes in the Further Notice, the WTO Basic Telecom Agreement will have an unprecedented impact worldwide in opening basic telecommunications to competition. (Further Notice ¶ 13) Close to 70 WTO member countries made access commitments under the Agreement, representing approximately 95 percent of telecommunications revenues worldwide. Included in this are 49 WTO members who have committed to completely open their satellite

service markets, either by 1 January 1998 or on a phased-in basis. In addition, more than 50 governments have included the Reference Paper on Pro-Competitive Regulatory Principles ("Reference Paper") as part of their commitment, and a number of others have committed to abide by most of the principles enunciated in the Reference Paper.

The WTO Basic Telecom Agreement is intended to promote competition, and to this end WTO countries participating in the Agreement have committed to assume obligations under the General Agreement on Trade in Services (GATS) in this service sector. In the present context, the two main obligations under the GATS are the most-favoured-nation (MFN) and the national treatment principles. Under the former principle, a country is bound to treat service providers of any WTO member no less favourably than it treats service providers of any other nation, while under the latter principle, a country must treat foreign service providers from WTO member wishing to serve its home market no less favourably than it treats its own domestic service providers. WTO countries participating in the WTO Basic Telecom Agreement have agreed to abide by these two principles for each sector of the basic telecommunications market in which they have made a commitment to liberalize entry to foreign service suppliers.

As indicated in the Further Notice, in light of the WTO Basic Telecom Agreement, the Commission has tentatively concluded that substantial changes are warranted in how entry into U.S. markets by non-U.S. satellites should be evaluated. (Further Notice ¶ 2) In particular, the Commission is proposing to establish a presumption that competition will be promoted, and that no ECO-Sat analysis is therefore required, in evaluating whether to permit satellites licenced by WTO members to provide services covered by the U.S. schedule of commitments under the Agreement. Specifically, the Commission is proposing to grant these applications on a "streamlined basis", provided they otherwise comply with FCC rules and policies, under a presumption that competitive market forces can be relied upon to enhance competition in these service markets. A party opposing the grant of authorization would have the burden of demonstrating that the grant would pose "a very high risk" to competition in the market and that the problem could not be addressed by conditions that could be imposed on the authorization.

[1] Notice of Proposed Rule Making, 11 FCC Rcd 18178 (1996) ("DISCO II Notice")

An ECO-Sat analysis would only be required in cases involving non-WTO members, intergovernmental organizations (IGOs), and services for which the United States has taken an exemption from the MFN obligations of the WTO Basic Agreement. While the use of the ECO-Sat test would be thus limited, the Commission also indicates that, in all cases, it will consider whether a grant of an application to access a non-U.S. licenced satellite will otherwise serve the "public interest, convenience, and necessity".

Telesat is in agreement with the Commission's view that, as a result of the WTO Basic Telecom Agreement, substantial changes are warranted in how the Commission proposed to evaluate applications to serve U.S. markets using non-U.S. satellites under its original Notice in this proceeding. In particular, an ECO-Sat analysis is inappropriate in situations involving satellite systems licenced by other WTO member countries and there should be a presumption that competition will be enhanced by grant of the authorization. However, as discussed in this submission, the Company is concerned that the use of a "public interest, convenience and necessity" test may create confusion and difficulties for non-U.S. satellites to serve U.S. markets. There is also some question as to whether portions of the new proposals are consistent with the WTO Basic Telecom Agreement and the underlying GATS principles. As noted in what follows, Telesat seeks clarification from the Commission on some of these matters in order to remove the uncertainty on the ability of the Company to participate fully in the U.S. market.

II. COMMENTS ON THE PROPOSALS

1. The Commission's abandonment of the ECO-Sat test for WTO-member countries is appropriate and consistent with the underlying principles and intent of the WTO/GATS Agreement.

As noted above, Telesat believes that an ECO-Sat analysis is inappropriate in situations involving use of non-U.S. satellites licenced by another WTO country to provide services covered by the WTO Basic Telecom Agreement in the U.S. marketplace. With their commitments under this Agreement, these countries have agreed to open their markets and to

abide by the GATS MFN and national treatment principles, and it should be presumed that with these commitments, these countries have satisfied the basic requirements of such a test.

2. The proposed consideration of "public interest, convenience, and necessity" factors needs to be clarified to reduce any ambiguity in their application.

In the Further Notice, the Commission is proposing not to conduct an ECO-Sat analysis for satellites from WTO countries, in evaluating whether to permit non-U.S licenced satellites to serve the United States, but to "consider whether grant is consistent with our goal of facilitating competitive market access and the corresponding benefits of open markets to users", and to "examine other factors that bear on whether grant of a request to serve the United States using a non-U.S. satellite is in the public interest, convenience, and necessity." (Further Notice ¶ 15)

Telesat seeks the Commission's clarification that such public interest criteria do not apply to trade issues already dealt with and agreed to in the WTO negotiations.

In Telesat's view, these further public interest requirements have effectively been satisfied in the context of the WTO Agreement. Specifically, it should be presumed that, by agreeing to let their respective offers stand and become part of the Agreement, each of these WTO countries have concluded that their participation in the Agreement – including acceptance of the offers of other WTO members – is in their respective public interest, else they would have withdrawn their offers. Indeed, for WTO member countries to apply further broad public interest tests may impede the development of the competitive telecom environment expected from the WTO Agreement and may indeed be inconsistent with the MFN and national treatment principles of the GATS.

Furthermore, as noted in the earlier comments filed by a number of other parties in this proceeding in response to the original DISCO II Notice, the introduction of further tests or filing requirements in the United States (or other WTO countries) could cause other countries to

introduce their own similar tests or counter measures. The whole purpose of the multilateral WTO Basic Telecom Agreement could therefore be compromised.

Telesat respectfully submits that use of broad public interest tests will also introduce considerable uncertainty and ambiguity into the authorization process. Specifically, with any open-ended "public interest, convenience, and necessity" test, foreign satellite operators contemplating entry into U.S. markets will have no clear idea of exactly what they must do to ensure that authorization will be granted. Similarly, without a clear idea about whether a particular non-U.S. satellite facility operator will be allowed into the U.S. market, U.S. satellite service providers and end users will be deterred from making any commitment to these facility operators or possibly even looking to these alternative facility suppliers to serve their requirements. The expected consumer benefits of increased competition made possible by the WTO Agreement would therefore be seriously limited.

At a minimum, to alleviate this problem it would be useful for the Commission to provide further clarification and certainty as to what precisely these further public interest considerations would entail, including what would have to be done by the satellite operator to satisfy any such requirements. This would be consistent with the requirement for transparent processes as stipulated in the Reference Paper. It would also be useful if the final rules provided for an early indication of reasons for which an application might be denied, so as to allow the applicant to quickly make whatever modifications possible that are required to serve the U.S. market.

Telesat submits that an alternative approach for realizing the full benefits of competition would be for the Commission to accept fully a presumption that a grant of authorization would be in the public interest, with the Commission to respond to specific and extraordinary problems from the entry of some non-U.S. foreign satellite operator on an exception basis only. Such a presumption would assist customers in making their choice of supplier with the knowledge that the Commission will normally grant their earth station authorization on a routine basis.

3. U.S. customers should enjoy the same ease of access to WTO member country satellites as they do to U.S. satellites, and uplink licensing procedures should remain the focal point for authorization to access any satellite.

The entry of foreign satellites from WTO member countries into the U.S. market will result in an increased choice of competitive alternatives for U.S. customers, but should not impose an additional regulatory burden for these customers. The Commission's licensing approval for a customer to access an FSS satellite, regardless of whether it is a U.S. facility or one from a WTO member country, should continue to rely on the earth station licensing procedure and, in accordance with the principles of national treatment, not discriminate on the basis of country of origin.[2]

Rather, customers should be able to consult a listing of eligible satellites authorized by the Commission for use by the U.S. market. Telesat proposes that satellite operators could file a Letter of Intent stating their intention to provide space segment service. The Commission would provide a blanket approval for each such satellite to offer services covered by the WTO Agreement, and be eligible for access by any earth station licence applicant. The Letter of Intent from the satellite operator, not unlike a streamlined Part 25 application, would provide basic information required for the Commission to ascertain that the spacecraft has been duly licensed in a WTO jurisdiction and that its spectrum and orbital location has been coordinated.

Such a procedure is consistent with GATS Article VI *Domestic Regulation*, item 4 which states,

> "With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia:
>
> (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
>
> (b) not more burdensome than necessary to ensure the quality of the service;
>
> (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service."[3]

[2] As noted in paragraph 6 of this submission, receive-only earth station licensing should continue to be liberalized.

[3] General Agreement on Trade in Services, Article VI, item 4.

In the Company's view, examining the characteristics of the WTO member's trade policies with third countries introduces elements into the decision-making process which are not relevant to provision of service within the U.S. market and is not required for the Commission's analysis. (Further Notice ¶¶ 18, 19, 41-43) In addition, such a consideration introduces unwarranted complexity to the process for U.S. customers seeking to obtain service from foreign satellites.

Instead of prospective users needing to collect and submit information regarding trade practices of WTO satellite operators, it would be more practical for customers wishing to obtain U.S.-U.S. or U.S.-foreign service to continue to submit an earth station licence application to access the authorized satellite, regardless of whether the satellite is licensed by the U.S. or by a WTO member jurisdiction. The process would thus be identical and non-discriminatory for both.

The Commission proposes to allow a foreign satellite operator seeking entry to the U.S. market to participate in a processing round or, alternatively, to allow that operator or its prospective customers to file an earth station application if the international coordination process for the non-U.S. licensed space station has been initiated. (Further Notice ¶ 54, 55) The Further Notice acknowledges that a foreign operator may continue to pursue protection of its non-U.S. licensed system through coordination with the International Telecommunications Union (ITU). Accordingly, Telesat agrees that an earth station application or Letter of Intent to operate a non-U.S. licensed satellite can be considered independent of a processing round.

Telesat also supports the Commission's determination that a foreign operator should be able to rely on the technical data filed with the ITU. Telesat agrees that a duplicative submission to the U.S. as part of an earth station application or Letter of Intent should be unnecessary. In this regard, the technical information of a proposal should not be required where international coordination has been initiated. In that circumstance, the public has been advised of the technical details of the proposed operation even though the coordination process has not been completed. In light of the foregoing, Telesat submits that the language of Sections 25.137(b) and (c) should be modified accordingly.

If the U.S. takes the lead in streamlining the entry requirements for WTO satellite operators, U.S. operators seeking to provide service in other WTO member countries would similarly expect

these other jurisdictions to grant relief from the obligation to repeat the full space station licencing process.

4. Consideration of spectrum availability and technical coordination issues is not necessary in the case of Fixed Satellite Services (FSS) provided by foreign satellites which have been or will be coordinated through the ITU by the foreign administration, and filing requirements should be eliminated accordingly.

In the Further Notice, regarding spectrum availability and technical coordination issues, the Commission has indicated that it would not expect to authorize a non-U.S. satellite to serve the United States if grant would create debilitating interference problems with U.S. service providers. (Further Notice ¶ 38) Telesat submits that in the case of a non-U.S. licenced FSS operator such problems would not arise as the frequencies for such operators are coordinated through ITU procedures. Specifically, technical compatibility and interference issues are addressed through these procedures, with all affected jurisdictions generally participating to ensure all their concerns with respect to such matters are dealt with satisfactorily. As noted above in paragraph 3, the Commission acknowledges that this Notice does not propose to change the role or effect of the ITU coordination process. Thus, this issue should not be of concern and the Commission should refrain from imposing such interference conditions on geostationary FSS satellite operators from WTO member countries in these instances.

5. Applying the same rules to receive-only earth stations operating both with U.S. and non-U.S. satellites is necessary to be consistent with the "national treatment" principle of the WTO/GATS Agreement.

Under the rules proposed in this proceeding, licensing of receive-only earth stations would be based on the national origin of the satellite. (Further Notice ¶ 57) Consequently, this would discriminate against foreign satellites of member countries, even in the case of such a satellite being used to transmit U.S. to U.S. traffic. As such, it would impose an undue burden on U.S.

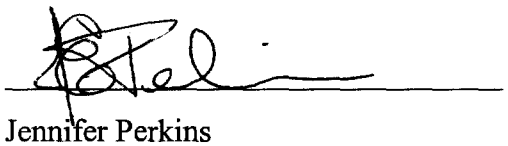
customers and would discourage the use of foreign satellites. Telesat submits that the removal of the requirement for the licensing of receive-only earth stations operating with U.S. satellites has been a progressive step in the promotion of competition through the streamlining of regulation, and that extending such a practice to similar services covered under the WTO Agreement for member satellites is necessary and appropriate under the principles of national treatment.

III. CONCLUSION

The WTO Basic Telecom Agreement presents an unprecedented opportunity for opening basic telecommunications markets worldwide to the benefit of consumers everywhere. For it to have its intended impact, however, it is imperative that foreign satellite operators have a clear and complete understanding as to what requirements must be satisfied before they will be allowed to serve customers in other WTO member country markets.

Telesat therefore urges the Commission to take all the necessary steps to minimize this uncertainty by clearly delineating all the conditions that must be met for foreign satellite systems to serve the U.S. market. Only in this way can the Commission meet its objective to "foster efficient and innovative satellite communications services for U.S. users through fair competition among multiple service providers, including non-U.S. service providers."

Respectfully submitted,



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